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REGIONAL DESIGN VIII
ENVIRONMENTAL ENFORCEMENT BRANCH

DEPARTMENT OF HEALTH
1517 16TH AVENUE COURT
GREELEY, CO 80631

ADMINISTRATION (970) 353-0586
HEALTH PROTECTION (970) 353-0635
COMMUNITY HEALTH (970) 353-0639
FAX (970) 356-4966

March 4, 1998

Certified Letter No.: Z 130 100 100
Legal Action No.: 98-008

Frank P. Prager, Esq.
Attorney for Public Service Company of Colorado
New Century Energies, Inc.
1225 17th St. Suite 600
Denver, CO 80201

Re: Lake Thomas

Dear Mr. Prager:

On September 30, 1997, I participated in a meeting on behalf of the Weld County Department of Health (Weld) at the headquarters of the Region VIII of the United States Environmental Protection Agency (EPA) with representatives of EPA, the Colorado Department of Public Health and Environment (CDPHE), and Public Service Company of Colorado (PSCo). At that meeting, the PSCo representatives discussed the alleged odor problem and alleged generation and release of H₂S gas from or at Lake Thomas Reservoir located at the intersection of Weld County Roads 13 and 32 in Weld County.

During the meeting, representatives of EPA expressed their desire for PSCo to commit to implement this plan through an enforceable process administered by EPA, CDPHE or Weld. After several weeks of discussion, Weld has issued this notice to correct the alleged odor problems and alleged generation or release of H₂S gas from or at Lake Thomas subject to the terms and conditions set forth below.

1. PSCo submitted to Weld, on November 21, 1997, a detailed plan outlining the construction at Lake Thomas. The plan is attached as Exhibit A and incorporated by reference. PSCo shall implement the plan in accordance with Exhibit A and this notice. PSCo shall complete the construction required in the plan by May 31, 1998, unless excused by force majeure under paragraph 3.
2. PSCo submitted to Weld on March 2, 1998, a monitoring plan. The monitoring plan is attached as Exhibit B and incorporated by reference. PSCo shall implement the plan in accordance with Exhibit B and this notice.
3. PSCo shall be excused from implementing the plans described in paragraphs 1 and 2 of this notice if a force majeure event occurs.

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- a. A force majeure event is defined as any event arising in whole or in part from causes beyond the control of PSCo or any entity controlled by PSCo, including but not limited to its contractors and subcontractors, that (1) delays or prevents or can reasonably be expected to delay or prevent compliance with the terms of the plans; or (2) renders or can reasonably be expected to render such compliance technically impracticable. Without limiting the foregoing, a force majeure event includes, but is not limited to, discovery of damages to or problems with the intake structure discharge pipe and weather related construction delays which materially impede progress towards implementing the plan.
 - b. A force majeure event does not include events related to the design of the equipment described in Exhibit A or structural problems in the intake structure discharge pipe to the extent that PSCo knew or reasonably should have known of such events at the time it submitted the plan described in Paragraph 1 above.
 - c. As soon as practicable after identifying a force majeure event, PSCo shall notify Weld of the event and submit for Weld's approval a revised schedule and a revised construction plan, if necessary. Upon approval by Weld, the revised schedule and revised construction plan shall be incorporated into this notice by reference and PSCo shall implement them in accordance with this notice.
4. PSCo shall be released from the requirements of this notice after (1) completion of the construction contemplated by Exhibit A; and (2) Weld releases the notice in writing after review of the results generated by the monitoring plan contemplated by Exhibit B.
5. In the event that PSCo fails to comply with this notice, Weld may bring legal action to enforce its terms. In such legal action, PSCo waives any claim or defense based on Weld's lack of authority under C.R.S. Section 25-1-613 to bring such action. PSCo specifically agrees, without waiving any other right, including without limitation its right to contest the claim of lack of compliance with this notice, that this notice constitutes a lawful order of an agency or officer of the State of Colorado ordering the abatement, correction or discontinuance of an activity, operation or condition in violation of a statute of the State of Colorado which may be enforced under Section 16-13-309(1)(2) and (5) may include, if ordered by the Court, the imposition of civil fines conditioned upon a failure or refusal of compliance with orders of the Court in the amount set forth in Section 16-13-312 C.R.S. .
6. Notwithstanding any other provision of this notice, (1) Weld has not made any finding that the alleged odors or alleged generation and release of H₂S gas or emissions at or from Lake Thomas constitute a nuisance or any threat to human health or the environment; and (2) PSCo does not admit and specifically denies that the alleged odors or alleged generation and release of H₂S gas or emissions at or from Lake Thomas constitute a nuisance or any threat to human health or the environment.
7. Nothing in this notice is intended to create or affect any rights in any party other than

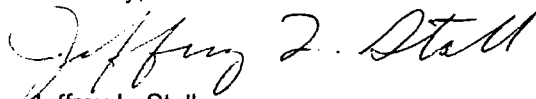
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Weld and PSCo. This notice was issued as a consequence of discussions between Weld and PSCo and at the request of EPA and does not constitute evidence of any violation of federal, state or local laws, statutes, rules, regulations, ordinances, orders or decrees. Nothing in this notice shall restrict or modify any water or other property rights held by PSCo or any other person.

8. Except as set forth above, PSCo and Weld reserve any and all rights, defenses, claims, demands and causes of action which each may have against any person with respect to any matter, transaction, or occurrence relating in any way to Lake Thomas.
9. During the term of this notice, PSCo agrees to grant Weld, the Colorado Department of Public Health and Environment, and EPA access to the Lake Thomas property at all reasonable times for purpose of monitoring progress made in complying with this notice and monitoring potential releases of H₂S gas. To obtain such access, representatives of Weld, EPA and the Department shall present proper credentials to PSCo at its Fort St. Vrain facility. Such representatives shall be accompanied at the Lake Thomas property by a representative of PSCo and shall at all times on PSCo property adhere to PSCo safety instructions.

If the terms and conditions of this notice are acceptable to you, please sign where indicated below and return the executed document to me. Please call me at 970-353-0635 if you have any questions.

Sincerely,



Jeffrey L. Stoll,
Director, Environmental Protection Services
Weld County Health Department



John Pickle
Director and Health Officer,
Weld County Health Department

Accepted and Agreed:

Frank P. Prager
Attorney for Public Service Company of Colorado

cc: Joyce Ackerman, U.S. EPA
Nancy Mangone, Esq., U.S. EPA
Sheila Burns, CDPHE
Jean Terry, CDPHE
John S. Pickle, M.S.E.H., Director, Weld County Health Department
Lee Morrison, Esq., Assistant County Attorney